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7 CFR Ch. VII (1–1–14 Edition)

(i) From any loan type, except Youth loan, and the balance is \$1,000 or greater, the Agency will apply the balance to the FLP loan;

(ii) From a Youth loan, and the balance is \$100 or greater, the Agency will apply the balance to the FLP loan;

(3) Normal income funds, the Agency will apply the balance to the remaining current year's scheduled payments and pay any remaining balance to the borrower; and

(4) Basic security funds, the Agency will apply the balance to the FLP loan as an extra payment or the borrower may apply the balance toward the purchase of basic security, provided the Agency obtains a lien on such security and its security position is not diminished.

(b) If the borrower is uncooperative in closing a supervised bank account, the Agency will make written demand to the financial institution for the balance and apply it in accordance with paragraph (a) of this section.

(c) In the event of a borrower's death, the Agency may:

(1) Apply the balance to the borrower's FLP loan;

(2) Continue with a remaining borrower, provided the supervised bank account was established as a joint tenancy with right of survivorship account;

(3) Refund unobligated balances from other creditors in the supervised bank account for specific operating purposes in accordance with any prior written agreement between the Agency and the deceased borrower; or

(4) Continue to pay expenses from the supervised bank account in conjunction with the borrower's estate.

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Subpart C—Supervised Credit

§ 761.101 Applicability.

This subpart applies to all direct applicants and borrowers, except borrowers with only Non-program loans.

§ 761.102 Borrower recordkeeping, reporting, and supervision.

(a) A borrower must maintain accurate records sufficient to make informed management decisions and to

allow the Agency to render loan making and servicing decisions in accordance with Agency regulations. These records must include the following:

(1) Production (e.g., total and per unit for livestock and crops);

(2) Revenues, by source;

(3) Other sources of funds, including borrowed funds;

(4) Operating expenses;

(5) Interest;

(6) Family living expenses;

(7) Profit and loss;

(8) Tax-related information;

(9) Capital expenses;

(10) Outstanding debt; and

(11) Debt repayment.

(b) A borrower also must agree in writing to:

(1) Cooperate with the Agency and comply with all supervisory agreements, farm assessments, farm operating plans, year-end analyses, and all other loan-related requirements and documents;

(2) Submit financial information and an updated farm operating plan when requested by the Agency;

(3) Immediately notify the Agency of any proposed or actual significant change in the farming operation, any significant changes in family income, expenses, or the development of problem situations, or any losses or proposed significant changes in security.

(c) If the borrower fails to comply with these requirements, unless due to reasons outside the borrower's control, the non-compliance may adversely impact future requests for assistance.

§ 761.103 Farm assessment.

(a) The Agency, in collaboration with the applicant, will assess the farming operation to:

(1) Determine the applicant's financial condition, organizational structure, and management strengths and weaknesses;

(2) Identify and prioritize training and supervisory needs; and

(3) Develop a plan of supervision to assist the borrower in achieving financial viability and transitioning to private commercial credit or other sources of credit in the shortest time practicable, except for CL.

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(b) Except for ML, the initial assessment must evaluate, at a minimum, the:

- (1) Farm organization and key personnel qualifications;
- (2) Type of farming operation;
- (3) Goals for the operation;
- (4) Adequacy of real estate, including facilities, to conduct the farming operation;
- (5) Adequacy of chattel property used to conduct the farming operation;
- (6) Historical performance, except for streamlined CL;
- (7) Farm operating plan;
- (8) Supervisory plan, except for streamlined CL;
- (9) Training plan; and
- (10) Graduation plan, except for CL.

(c) For ML, the Agency will complete a narrative that will evaluate, at a minimum, the:

- (1) Type of farming operation and adequacy of resources;
- (2) Amount of assistance necessary to cover expenses to carry out the proposed farm operating plan, including building an adequate equity base;
- (3) The goals of the operation;
- (4) The financial viability of the entire operation, including a marketing plan, and available production history, as applicable;
- (5) Supervisory plan; and
- (6) Training plan.

(d) An assessment update must be prepared for each subsequent loan. The update must include a farm operating plan and any other items discussed in paragraph (b) of this section that have significantly changed since the initial assessment.

(e) The Agency reviews the assessment to determine a borrower's progress at least annually. The review will be in the form of an office visit, field visit, letter, phone conversation, or year-end analysis, as determined by the Agency. For streamlined CLs, the borrower must provide a current balance sheet and income tax records. Any negative trends noted between the previous years' and the current years' information must be evaluated and addressed in the assessment of the streamlined CL borrower.

(f) If a CL borrower becomes financially distressed, delinquent, or receives any servicing options available

under part 766 of this chapter, all elements of the assessment in paragraph (b) of this section must be addressed.

[72 FR 63285, Nov. 8, 2007, as amended at 75 FR 54012, Sept. 3, 2010; 76 FR 5057, Jan. 28, 2011; 78 FR 3835, Jan. 17, 2013; 78 FR 65529, Nov. 1, 2013]

§ 761.104 Developing the farm operating plan.

(a) An applicant or borrower must submit a farm operating plan to the Agency, upon request, for loan making or servicing purposes.

(b) An applicant or borrower may request Agency assistance in developing the farm operating plan.

(c) The farm operating plan will be based on accurate and verifiable information.

(1) Historical information will be used as a guide.

(2) Positive and negative trends, mutually agreed upon changes and improvements, and current input prices will be taken into consideration when arriving at reasonable projections.

(3) Projected yields will be calculated according to the following priorities:

(i) The applicant or borrower's own production records for the previous 3 years;

(ii) The per-acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments, if available;

(iii) FSA Farm Program actual yield records;

(iv) County averages;

(v) State averages.

(4) If the applicant or borrower's production history has been substantially affected by a disaster declared by the President or designated by the Secretary of Agriculture, or the applicant or borrower has had a qualifying loss from such disaster but the farming operation was not located in a declared or designated disaster area, the applicant or borrower may:

(i) Use county average yields, or state average yields if county average yields are not available, in place of the disaster year yields; or

(ii) Exclude the production year with the lowest actual or county average yield if their yields were affected by